



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMse12111599

[REDACTED],
Complainant,

v.

LES BROTHERS RESTAURANT & PANCAKE HOUSE,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-3-2(b).

On September 5, 2012, [REDACTED] ("Complainant") filed a Complaint with the Commission against Les Brothers Restaurant & Pancake House ("Respondent") alleging discrimination on the basis of sex, and specifically, sexual harassment, in violation of the Indiana Civil Rights Law (Ind. Code § 22-9, *et. seq.*) [REDACTED]

[REDACTED] Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint.

An investigation has been completed. Both parties have had an opportunity to submit evidence. Based on the final investigative report and a review of the relevant files and records, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant was subjected to sexual harassment which resulted in the constructive discharge of her employment. In order to prevail, Complainant must show that: (1) she experienced unwelcome sexually offensive comments or actions in the workplace; (2) the comments/actions were sufficiently severe and/or pervasive that it interfered with Complainant's work performance; (3) she made it known that the comments were unwelcome; and (4) Respondent failed to take corrective action to address the hostile work environment.

By way of background, Complainant began working for Respondent as a waitress on or about December 18, 2011. Shortly thereafter, Complainant alleges she was consistently subjected to sexual harassment by Respondent's owner ([REDACTED]) and other male employees. Specifically,



Complainant alleges that Respondent's owner grabbed her breast, asked for a "blow job," pulled her towards him, and touched her waist even though she made it clear his actions were unwelcome. Similarly, she alleges male cooks ([REDACTED]) touched her breast, grabbed her buttock, called her "puta" ("bitch" in Spanish) as well as other derogatory names, and made sexually suggestive hand motions towards her. Again, Complainant told all involved parties that the behavior was unwelcome.

While there are no witnesses available to corroborate Complainant's allegations, the testimony of a former employee indicates that Respondent's owner and the same male employees may have subjected the former employee to substantially similar sexual harassment. Although Respondent denies these allegations and asserts if any contact occurred, it was incidental and as a result of employees passing one another in confined spaces, it admits that it does not have an anti-harassment policy. Rather, Respondent states it has instructed and advised its male employees to "avoid any inappropriate contact or conduct with any other employee." Further, while Respondent alleges Complainant was warned about talking to patrons instead of servicing her customers and was terminated "as a consequence of her failure to properly service her customers," Respondent admits that it has no personnel records for Complainant or the alleged harassers due to the "mom and pop" nature of the business. Moreover, Respondent admits that it has no evidence supporting its claims that it investigated Complainant's allegations as "the investigation was done face to face by members of the [REDACTED] family with various employees." In short, Respondent does not have a sexual harassment policy designed to avoid and/or address sexual harassment and there is little to no evidence to show that it actively took corrective action to address Complainant's allegations; as such, there is evidence to believe that Complainant was subjected to a sexually hostile work environment sufficiently severe and/or pervasive that a reasonable person would resign their position. As such, based upon the above mentioned, probable cause exists to believe that an unlawful discriminatory practice occurred in this instance.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6

November 12, 2013

Date

Akia Haynes

Akia A. Haynes, Esq.

Deputy Director

Indiana Civil Rights Commission